

EXHIBIT 2

A.J.P., ET AL. vs COUNTY OF SAN BERNARDINO, ET AL.
Andrew Pollick on 09/15/2023

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA

3

4 A.J.P. and A.M.P., minors, by and)
through their guardian ad litem)
5 Cynthia Nunez, individually and as)
successor in interest to Albert Perez,))
6 deceased, and PATRICIA RUIZ,)
individually,)
7)
Plaintiffs,)

8

vs.

9

COUNTY OF SAN BERNARDINO, and DOES
10 1-10, inclusive,

11

Defendants.

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15

REMOTE VIDEOCONFERENCE DEPOSITION OF

16

ANDREW POLLICK

17

SEPTEMBER 15, 2023

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23 Reported Stenographically By:

24 Jinna Grace Kim, CSR No. 14151

25 Job No.: 6788

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1 **Mr. Perez?**

2 A. When I initially arrived there was a period of I
3 would say around an hour, give or take, where we were
4 planning, and the garage was visible from where we were
5 planning away from the location.

6 And I could see the deputies, and they were like
7 engaging with Perez trying to negotiate with him in the
8 garage. So that happened for around maybe 45 minutes to an
9 hour before I got actually in to a position at the garage.

10 **Q. About what time do you think you got into your**
11 **position at the garage?**

12 A. I would estimate it was around 8:00 p.m.

13 **Q. One second, please.**

14 A. Yes, sir.

15 **Q. Thank you for your patience.**

16 I'm finishing up a mediation, and they're coming to
17 me with notes and all kinds of stuff.

18 A. No problem.

19 **Q. So about 8 o'clock approximately is when you got**
20 **into a position in the area of the garage?**

21 A. Yes, sir.

22 **Q. Prior to that had you been involved in some**
23 **discussions about using less-lethal options?**

24 A. Yes.

25 **Q. And can you tell me what less-lethal options you**

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1 **were involved in discussing?**

2 A. Yes. During the planning phase we discussed with
3 our team leader Sergeant Gaytan at the time. There was a
4 discussion that if there was to be separation between
5 Mr. Perez and the firearm, that less-lethal would need to be
6 deployed if he was trying to basically close that distance
7 and get access to the firearm.

8 So that was a discussion. We also discussed the use
9 of chemical agents such as CS gas which we use on the SWAT
10 Team. There was a chemical agent plan developed for that
11 location, and then that was something we also took into
12 consideration.

13 Q. With respect to the chemical agents, was it
14 ultimately decided not to go that route?

15 A. Yes. It was there in case we needed it, but
16 ultimately the tactical commander on scene which was Sergeant
17 Gaytan decided not to use them.

18 Q. And the chemical agents would be what,
19 essentially?

20 A. It's called CS gas. It's stands for a longer term.
21 I can't recall the specific term. It's very
22 scientific and has a lot of letters in it.

23 But essentially, it's a chemical irritant that
24 causes involuntary eye closure, tightness in the chest,
25 difficulty breathing, and draining of the mucous membranes of

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1 the body.

2 Q. And then the less-lethal options apart from that,

3 what was discussed?

4 Was it basically the 40-millimeter, or were there

5 other less-lethal options discussed?

6 A. All the deputies in our are issued department-issued

7 tasers. I had a Taser with me as well. That was an option

8 that I was aware that I had it. So in addition to the

9 40-millimeter, I also had a Taser available to me.

10 Q. And do you know what type of Taser that you had,

11 whether it was an X26 or an X2?

12 A. The Taser is an X2.

13 Q. And do you have an understanding as to the maximum

14 distance from which it can be used?

15 A. I believe it's approximately 15 or so feet.

16 Q. And was your understanding that many of the

17 officers, not just you, had Tasers on them?

18 A. Yes.

19 Q. So have you had a chance to review your transcript

20 of your initial statement?

21 A. I have, sir, yes.

22 Q. And do you recall when you gave that statement in

23 relation to the date of the incident?

24 A. I believe it was around two and a half, maybe three

25 weeks after the incident.

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1 Q. Do you know why it was so long after the incident
2 that you were giving the statement?

3 A. I believe it was just planning with the Sheriff's
4 homicide detail getting the schedules of the investigators
5 lined up with mine. I think that was simply conflict of
6 schedules. I know that the Homicide Division is very busy.

7 Q. Did you have a representative present on your behalf
8 for the statement?

9 A. I did.

10 Q. And was that an attorney as you understand it?

11 A. Yes.

12 Q. I don't want to know what you talked about, of
13 course. But did you have an opportunity at least consult
14 with your attorney before you gave your statement?

15 A. I did, yes.

16 Q. Was the attorney Russel Perry?

17 Does that sound familiar?

18 A. Yes, that's correct.

19 Q. So we're going to try to put up a few pages of your
20 statement to try to expedite some this process today.

21 But you eventually fired some rounds; is that
22 correct?

23 A. Yes, sir, that's correct.

24 Q. And do you know how many rounds you fired in

25 total?

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1 A. I would say after conducting the round count with
2 the Scientific Investigations Division representative after
3 the incident, it was approximately 15 or 16 total rounds
4 fired.

5 Q. And what type of weapon did you fire the rounds
6 from?

7 A. It would have been a Geissele G-e-i-s-s-e-l-e, M4
8 rifle 5.6 millimeter projectile that's fired by that weapon
9 system.

10 Q. And when you fired your rounds, was there more than
11 one volley of shots that you fired?

12 A. There were two volleys of shots that were fired.

13 Q. When you fired the volley of shots, where were you
14 positioned?

15 A. When I fired the first volley of shots, I was
16 positioned -- so the opening of the garage, the roll up door
17 would be the south side of the garage. The back wall of the
18 garage was the north side. I would have been on the west
19 side which would be left facing the garage from the street
20 where the opening ended, and there was essentially like a
21 pillar there that was part of the structure of the garage.

22 Q. Were you close to Deputy Moore?

23 A. Yes. Deputy Moore was kneeling directly in front of
24 me behind a ballistic shield. He had a pistol, and then I
25 was standing over him with my rifle as lethal cover.

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1 Q. And at some point did you observe Mr. Perez sitting
2 in the chair with a gun in his hand?

3 A. I did.

4 Q. And was Deputy Alcala talking to him at some
5 point?

6 A. He was.

7 Q. And at some point did you see Mr. Perez take the gun
8 and kind of put it between his legs?

9 A. Yes. At one point while Alcala was attempting to
10 negotiate with Perez, Perez took the pistol and put it
11 between his thigh and the chair that he was sitting on.

12 Q. And were you in the same general position you were
13 when you observed that --

14 A. Yes --

15 Q. -- that you were when you fired your shots?

16 A. Yes.

17 Q. And do you have an estimate as to how far that chair
18 that he was sitting in was from where you were positioned
19 when he was holding the gun and then put it between his
20 legs?

21 A. Yes. Initially during my interview with Homicide, I
22 just wanted to address this with you before we get to it.

23 The unit of measurement that I said was yards, and I
24 actually meant to say feet. So the numbers are accurate, but
25 the unit of measurement is feet instead of yards.

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1 But from where I was standing to where Perez was
2 behind the pool table, I would estimate between approximately
3 10 and 15 feet.

4 Q. From where you were standing to where the chair
5 was?

6 A. To where Perez was sitting in the chair with the gun
7 in his hand to where I was standing was approximately 10 to
8 15 feet.

9 Q. And then at some point did you see Mr. Perez put the
10 gun down?

11 A. Yes. At some point during negotiation phase, Alcala
12 was able to convince Perez to place the gun on the ground.
13 While Perez was seated, he leaned forward and he slowly set
14 the gun on the ground and then sat back up on the chair.

15 Q. And where was the gun at that point in relation to
16 the chair?

17 A. It would have been on the south side of the chair
18 just in front of it on the ground.

19 Q. And I don't think we've talked too much about
20 directions yet, but is going from the chair to the threshold
21 of the garage, the main garage door, is that in a south
22 direction?

23 A. Yes.

24 Q. So you essentially were looking north, maybe
25 slightly northeast?

1 A. That's correct, sir.

2 Q. And then at some point did you see Mr. Perez stand
3 up?

4 A. Yes.

5 Q. And start walking slowly in your direction?

6 A. Yes.

7 Q. Did he stop fairly close to the end of the pool
8 table?

9 A. Yes. I would estimate where he stopped was about
10 five feet from where I was.

11 Q. And would that be close to the end of the pool
12 table?

13 A. Yes. It would be around the area of the south side
14 of the pool table.

15 Q. It was he close to that corner of the pool table?

16 A. Yes. I believe that's a fair statement.

17 Q. And you're estimating that distance is about five
18 feet?

19 A. That's correct.

20 Q. So we're going to try to put up a few pages of your
21 statement and look at it together. So let's first see if we
22 can get up to Page 20 -- I think 20. Let's try to go to Page
23 20 if we can.

24 Okay so let's go to the bottom of Lines 18 through
25 26.

1 please.

2 Q. Take your time.

3 A. Go ahead with your question, sir.

4 Q. Sure. Is this the time frame you're describing
5 where Mr. Perez was sitting in the chair, Alcala was talking
6 to him, and he took the gun that was in his hands and put it
7 between his leg or legs?

8 A. Yes.

9 Q. And somebody said, and it's quoted here, "Hey, he
10 doesn't have the gun in his hand anymore, just FYI."

11 Do you see that?

12 A. I do, sir.

13 Q. Was that Gaytan that said that at the time?

14 A. No, sir. That was an observation that I made.

15 Gaytan was standing to my left, and I went ahead and
16 made the observation, and I notified him of my
17 observations.

18 Q. Okay. And during the time that he had the gun in
19 his hand, did you ever see him point it at anyone?

20 A. When he had the gun in his hand, sir, it was resting
21 in his hand with his finger on the trigger.

22 However, it was not pointed at anyone at that
23 time.

24 Q. Did he ever appear to you at least while he was
25 sitting in the chair that he was trying to shoot anyone with

1 the gun?

2 MS. CARPENTER: Lacks foundation.

3 You can answer.

4 THE WITNESS: It did not appear to me that he was
5 actively trying to shoot anybody while he was sitting in the
6 chair.

7 BY MR. GALIPO:

8 Q. Did you have some information by radio dispatch or
9 text thread that he might be 5150?

10 A. There was a discussion. There was some operational
11 thread that was created by Sergeant Gaytan with the members
12 of Specialized Enforcement Division, and that information was
13 put in the thread, yes.

14 Q. And have you had some training on dealing with
15 people that might be suffering from mental health crisis?

16 A. I have, yes.

17 Q. And some of that involved the concept of
18 de-escalation?

19 A. That's correct.

20 Q. Did you have any information on the day of the
21 incident as of the time you saw Mr. Perez sitting in that
22 chair that he had seriously injured or killed someone?

23 A. I did not have any information indicating that,
24 no.

25 Q. Were there any paramedics that you were aware of

1 long. It was several hours. It was hours that patrol was
2 there prior to Specialized Enforcement Division was there.

3 So that very well could have been the case.

4 Q. Okay. Let's go to the next page, please, the top of
5 Page 21.

6 You referenced at the top -- can you see that on
7 your screen?

8 A. Yes.

9 Q. "Alcala continued to talk about, you know, him being
10 there for his daughters, doing the right thing to allow us to
11 help him, telling him to put the gun down."

12 Do you see that reference?

13 A. Yes. Do you mind if I read the entire passage?

14 Q. I don't mind at all. Take your time.

15 A. Okay. Go ahead with your question, sir.

16 Q. Sure. Do you recall Alcala talking about
17 Mr. Perez's daughters with him?

18 A. I do recall that, yes.

19 Q. And asking Mr. Perez to put the gun down?

20 A. Yes. I do recall him asking him to put the gun down
21 as well.

22 Q. And at some point you've already told me that you
23 saw him put the gun down on the floor?

24 A. That's correct.

25 Q. That would be by his feet, essentially?

1 A. That's correct.

2 Q. And your impression at that time was at least he
3 looked like he was starting to listen and obey some commands.

4 Was that generally your hope or impression?

5 A. That's correct.

6 Q. I mean putting the gun down, obviously, was a good
7 thing at that point from your perspective?

8 A. I would say it was a step in the right direction to
9 ending the incident peacefully. That's what we were
10 hoping.

11 Q. And then it goes on in the next paragraph that he
12 was given instructions to stand up and walk towards us, and
13 you indicate the 10 or 15 yards away from us.

14 But you're telling me that you were intending to
15 mean feet, but you kept saying yards?

16 A. So what's your question, sir?

17 Q. The question is: Was he given instructions to stand
18 up and walk towards you at some point?

19 A. Yes.

20 Q. And did he do that?

21 A. He did.

22 Q. And you indicate that he stopped about five yards
23 from your team, but you're telling me that you were intending
24 to say feet?

25 A. That's correct, sir. And further on in my

1 interview, I believe the detectives got some clarification on
2 that distance in which they were asking me how many feet away
3 which is consistent with what I'm telling to now, what I'm
4 testifying to now, is that unit of measurement is feet.

5 Q. Okay. Now, at some point you became aware that
6 less-lethal had been deployed?

7 A. Yes.

8 Q. And at the bottom of Page 21 you indicate at some
9 point that Sergeant Gaytan kind of stepped in and started
10 talking to Perez?

11 A. Sir, can you give me a second to read the passage --

12 Q. Yeah. At the very bottom of the page.

13 A. Okay.

14 Q. There we go. Do you see the last two lines?

15 A. Yes. Are those the lines --

16 Q. Do you recall that happening?

17 A. Those are the lines you're referring to, the last
18 two?

19 Q. The last two, right. Gaytan stepping in and
20 starting to talk to Perez.

21 A. Yes. I do recall that.

22 Q. And then at some point you saw him take a step back
23 with his left foot?

24 A. Yes.

25 Q. And that's when you saw Deputy Stone hit him with a

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1 A. I saw him take one step back with his left foot.

2 Q. Was he still generally facing in the same
3 direction?

4 A. Aside from his left foot now being closer to the
5 firearm, yes, he was generally facing south.

6 Q. And do you have an estimate as to how much time
7 passed from him taking that step back with his left foot to
8 the less-lethal being deployed?

9 A. I would say it was several seconds, a couple seconds
10 approximately.

11 Q. Was there any verbal announcement that less-lethal
12 was going to be deployed?

13 A. I did not hear a verbal announcement that
14 less-lethal was being deployed.

15 Q. Could you see Mr. Perez's hands when he took that
16 step back?

17 A. I could see Mr. Perez's hands were down on his side
18 when had he took that step back.

19 Q. And when the less-lethal was deployed, were his
20 hands also at his side?

21 A. I don't recall specifically what his hands did after
22 the less-lethal hit him. It appeared to stun him and catch
23 him off guard, but I don't recall specifically what his hands
24 were doing at that time.

25 Q. What did you see that gave you the impression that

1 it stunned him and caught him off guard?

2 A. I saw his shoulders kind of rise up above his ears

3 or to his ear level. It appeared to startle him.

4 Q. And could you tell if it struck him?

5 A. Yes. It appeared to hit him in the left shoulder
6 when he was hit the 40-millimeter less-lethal round.

7 Q. Was that the first round?

8 A. To my understanding, yes.

9 Q. Were there additional 40-millimeter rounds fired, if
10 you know?

11 A. I believe so, yes.

12 Q. And what was your observation or impression in that
13 regard?

14 A. My observations were Perez took a step back.
15 He was struck in the left shoulder by a
16 40-millimeter round. He immediately turned full sprint, ran
17 back to where the gun was on the floor, and I believe Gaytan
18 and Stone both fired additional rounds.

19 I don't know specifically how many they fired as
20 Perez was making his way to where the gun was.

21 Q. Did you see Mr. Perez turn in the direction of the
22 gun after the first 40-millimeter round was fired?

23 A. Yes. I believe Mr. Perez turned in the direction
24 after that first round was fired from the less-lethal.

25 Q. Do you know if any other 40-millimeter rounds were

1 lethal rounds, or you believe they were only non-lethal?

2 A. The 40-millimeter launcher makes a very distinct
3 noise when it is fired. I described it in the past as being
4 similar to someone firing a T-shirt cannon at a baseball
5 game.

6 It doesn't sound like gunfire. It's very distinct.

7 And so I heard those additional noises consistent
8 with a 40-millimeter being fired after Perez turned and he
9 was running. And so that's what I can testify to today,
10 sir.

11 Q. And would you at least agree that in your statement
12 at least in one portion of your statement, you said that at
13 the time you started firing, Mr. Perez was a couple of yards
14 from the gun?

15 A. Yes. And I believe I testified today as well that
16 that unit of measurement would be feet.

17 Q. Do you have a general understanding that yards are
18 essentially three feet to a yard?

19 A. Yes.

20 Q. So your initial volley of shots, you believe was
21 five to eight?

22 A. That's correct, yes. A volley of around five to
23 eight rounds fired.

24 Q. And do you have any estimate as to how much time
25 passed from the first shot to the last shot in the first

1 commands to Perez.

2 Q. When you were firing, what part of his body were you
3 firing at in the first volley?

4 A. First volley or rounds as Perez was making his way
5 to where the gun was, I would say he was about ten feet away
6 from me. My sight picture was center mass of his upper torso
7 as he was facing away from me. He was beginning to crouch
8 down, lowering to where that firearm was on the floor.

9 Q. So his center torso as he is facing away from you,
10 would that be his back?

11 A. That's correct, yes.

12 Q. And when you obtained your sight picture, you would
13 have essentially been aiming towards his back?

14 A. As he was running towards where the firearm was on
15 the floor, he would have been facing away from me. So that
16 was the only target that I had was him facing me.

17 Q. How much time would you say passed from the initial
18 less-lethal round you heard, the one that struck him in the
19 left shoulder and you firing your first shot?

20 A. I would estimate the time from when he was struck
21 with the less-lethal round to me firing that first shot to be
22 approximately a couple of seconds.

23 Q. And you indicated that after he was struck with that
24 first round, he appeared startled, and he turned and started
25 to run.

1 Do I have that right?

2 A. Yes. When he was struck with that first round, it
3 did catch him off guard, but it was ineffective because he
4 ran toward where the firearm was on the floor.

5 Q. And how much time do you think passed from when he
6 turned and started to run to when you fired your first
7 shot?

8 A. It was maybe a half a second, three quarters of a
9 second. This is all approximate.

10 Q. And how far do you think he got in that half a
11 second to three quarters of a second?

12 A. From which time frame are you referring to?

13 Q. From when he turned and started to run to when you
14 fired your first shot.

15 A. I believe he was able to cover maybe approximately
16 five to ten feet in that time frame. It was very fast.

17 Q. Now, you indicate in your statement that Perez had
18 dove behind the pool table.

19 Do you remember?

20 A. I do remember saying that he dove behind the pool
21 table, yes.

22 Q. Is that something that you observed?

23 A. Yes.

24 Q. And when he was on the ground after diving behind
25 the pool table, could you still see a portion of his body?

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1 A. Are you referring to after my first volley; correct?

2 Q. Correct.

3 A. Yes. After I fired my first volley, Perez had dove
4 behind the pool table, and his lower extremities were
5 exposed.

6 Q. So I know you told me that before he went to the
7 ground behind the pool table you heard other less-lethal
8 rounds being fired.

9 Could you tell if other lethal rounds were being
10 fired including by Deputy Moore right in front of you before
11 Mr. Perez went to the ground?

12 A. Sorry. There was a lot to that question.

13 Can you rephrase that, please.

14 Q. There was. I'm sorry about that.

15 Let me try to break that down.

16 I think you told me that as he was moving towards
17 the rear of the pool table where the gun was located, you
18 heard other rounds being fired other than your rounds.

19 A. I believe I testified to hearing additional
20 less-lethal rounds fired before I fired, yes.

21 Q. My question was -- and maybe you've already answered
22 it: Did you hear any lethal rounds being fired other than
23 yours including from Deputy Moore who was kneeled right in
24 front of you?

25 A. When I initiated my first volley of fire, all that I

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1 where I last saw the firearm. I believe he was in possession
2 of it and trying to use it against us.

3 **Q. My specific question is: Did you see the firearm in**
4 **his hand?**

5 MS. CARPENTER: Objection. Lacks foundation;
6 assumes facts.

7 You can answer.

8 THE WITNESS: **I could see Perez in the vicinity of**
9 **where the firearm was, sir.**

10 BY MR. GALIPO:

11 **Q. Could you see it in his hand?**

12 **A. I couldn't --**

13 MS. CARPENTER: Asked and answered.

14 You can answer again.

15 THE WITNESS: I couldn't see Perez's hands.

16 I could see lower extremities as I testified to
17 before.

18 BY MR. GALIPO:

19 **Q. Did you see any muzzle flash coming from him?**

20 **A. I don't recall seeing any muzzle flash.**

21 **Q. Could you see anywhere on his body from his waste**
22 **up?**

23 A. No. The area that I had visible to me were Perez's
24 lower extremities during my second volley of fire.

25 **Q. What part of his lower extremities?**

1 Do you know if it was from the knees down or the
2 thighs down?

3 A. I would estimate around his mid thigh to his feet
4 were exposed.

5 Q. So in your second volley of shots, you were aiming
6 at his legs?

7 A. Yes. Before -- when we were briefing with the team,
8 there was a discussion about a pool table being present in
9 the room.

10 So knowing that the pool table was there and Perez
11 was behind it, I know pool tables are particularly thick and
12 a good means of cover and concealment. I wasn't confident
13 that my rounds would penetrate the pool table to engage Perez
14 in center mass.

15 The only target of opportunity that I had was his
16 legs which were exposed. So I went ahead and targeted his
17 legs center mass for my second volley.

18 Q. Did you give any commands or warnings before firing
19 your second volley of shots?

20 A. Sir, as I testified before, the situation was very
21 dynamic, uncertain, and rapidly evolving. I didn't have the
22 opportunity to give commands. I was simply reacting to what
23 I perceived as a threat at that time.

24 Q. How much time passed between your first volley of
25 shots and your second volley of shots?

1 A. Maybe a half a second to a second and a half,
2 approximately. It was a brief pause.

3 Q. When you fired your first volley of shots, you said
4 you were using your sights?

5 A. Yes. When I fired both of my volleys of shots, I
6 utilized my optic that was on my weapon system which is a red
7 dot optic.

8 Q. And you were aiming at his back for the first volley
9 of shots?

10 MS. CARPENTER: Objection to the extent it misstates
11 his testimony.

12 You can answer.

13 THE WITNESS: During my first volley of shots, I
14 identified center mass on Perez which would have been his
15 torso while he was facing away from me running to where the
16 gun was.

17 BY MR. GALIPO:

18 Q. Which would be his back.

19 MS. CARPENTER: To the extent it misstates his
20 testimony, objection.

21 You can answer again.

22 THE WITNESS: As I said before, sir, he was running
23 towards where the firearm was. Center mass would have been
24 his back as he was running away from me to where the firearm
25 was.

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1 BY MR. GALIPO:

2 Q. What would you estimate the distance he was from you
3 when you started to fire your first volley of shots?

4 A. I would estimate the distance when I fired my first
5 volley to be approximately 10 to 12 feet or so.

6 Q. Do you consider yourself to be a pretty good shot?

7 MS. CARPENTER: That's an argumentative form.

8 You can answer.

9 THE WITNESS: There are high standards to be
10 selected for a division such as the Specialized Enforcement
11 Division. There's a very high shooting standards.

12 I would -- I would say I'm proficient with firing
13 firearms, yes.

14 BY MR. GALIPO:

15 Q. So if you fired five to eight shots using your red
16 dot system from 10 to 12 feet away aiming at his back, did
17 you have the impression that you struck him with at least
18 some of those shots?

19 A. When I engaged Mr. Perez with my first volley, my
20 sight picture was -- the dot was in the center of his back as
21 he's making his way to the firearm.

22 And I would hope that my shots were accurate and on
23 target, but he continued to move, so I continued to engage
24 with those rounds.

25 Q. So was it your impression when he went to the ground

1 have to look through his body. But he was where the firearm
2 was last seen.

3 BY MR. GALIPO:

4 Q. So are you saying that your view would have been
5 blocked if he had picked up the firearm?

6 MS. CARPENTER: Misstates his testimony.

7 You can answer.

8 THE WITNESS: I'm saying that when I fired that
9 second volley, I could see his legs, and I knew that he was
10 where the firearm was last.

11 BY MR. GALIPO:

12 Q. Let me just try to break this down.

13 Before he dove to the ground behind the pool table,
14 did you see him pick the gun up?

15 A. Say that one more time?

16 Q. Before you saw him dive behind the pool table, did
17 you see him pick the gun up?

18 A. Before he dove behind the pool table, I saw him
19 sprint running to where the firearm was, lowering his center
20 of gravity to where the firearm was.

21 Q. I get all that. I'm wondering if you saw him pick
22 it up.

23 MS. CARPENTER: Asked and answered; lacks
24 foundation.

25 You can answer again.

1 BY MR. GALIPO:

2 Q. I take it it's a no; you didn't see him pick it up,

3 but maybe --

4 A. I --

5 Q. Go ahead.

6 A. I saw him running to where it was, sir.

7 Like I said before, he was between me and the

8 firearm. And so I would have to look through him. I'm not

9 saying that I saw him pick it up. I don't know if he picked

10 it up, but I believed that he was going to where the firearm

11 was at that point.

12 Q. Okay. And then did you have the impression that

13 your second volley of shots struck him in the leg as he was

14 in that position you described?

15 A. When I engaged with my second volley on Mr. Perez, I

16 believed I had a good sight picture when I was targeting his

17 legs, and I believe that the rounds were hitting him.

18 Q. Have you ever looked at the autopsy report?

19 A. I have.

20 Q. And did you note when you looked at it various shots

21 that struck him in the legs?

22 A. I'm aware of the injuries to Mr. Perez from the

23 shots that hit him in the legs.

24 Q. Including the shots to the legs?

25 A. Yes.

1 Q. Did you note when you reviewed the autopsy report if
2 there were any shots to the back?

3 A. I believe when reviewing the autopsy report, there
4 was numerous gunshots wounds to Mr. Perez.

5 Q. Including to his back?

6 A. I don't recall specifically to his back, but I know
7 that there were multiple gunshot wounds.

8 Q. Do you know how many shots in total you actually
9 fired?

10 A. I believe I testified before that it was
11 approximately 15 to 16 total rounds fired.

12 Q. What type of ammunition does that weapon have?

13 A. It's a 5.56 millimeter projectile that's fired from
14 that weapon.

15 Q. Did you hear any shots being fired after your last
16 shot?

17 A. After my last shot from my last volley; is that what
18 you're asking, sir?

19 Q. Yes.

20 A. I believe that I did hear additional gunfire after I
21 fired my last shot.

22 Q. Did you know who was firing those shots?

23 A. I do not.

24 Q. Could you tell if it was a firearm versus a rifle?

25 A. I could not tell.

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1 Q. During the time that Mr. Perez was sitting in the
2 chair with the gun in his hand, were officers pointing
3 weapons at him?

4 A. Yes. There were deputies pointing weapons at him
5 when he had a gun in his hand.

6 Q. And I think you already told me he never pointed it
7 at anyone during that time?

8 A. Right. He had the firearm in his hand. I could see
9 it clearly in his hand and his finger was on the trigger.

10 However, he was not point it at anyone at that
11 point.

12 Q. And you didn't know if the gun was loaded or not at
13 the time; is that fair?

14 A. I think that's a fair statement. I would have no
15 way of knowing if that firearm is loaded or not.

16 Q. And when he put the gun between his legs, were
17 officers still pointing their firearms at him?

18 A. The situation as I testified before developed over a
19 time frame of hours. So there were times where officers were
20 pointing their weapons at him. Fatigue would start to set in
21 and maybe he would lower slightly.

22 Perez would periodically shift and do different
23 things, and we would come back on our sights and we would
24 lower. I mean it was over period of time.

25 So there were periods, yes, where we had our weapons

1 walked towards us?

2 Q. That's right.

3 A. I would estimate it was maybe five to ten minutes.

4 Q. During that time frame was your gun pointed at
5 him?

6 A. Yes. For that time period it was. Like I said
7 before, there would be a period of five or ten minutes.

8 Fatigue may set in, and you may have to lower and
9 adjust, and then come back on target.

10 And that's what I did.

11 Q. So I guess what I'm wondering, you had some
12 information that this could be a 5150 call; correct?

13 A. Yes. As I testified before, Sergeant Gaytan did
14 include some information in the operational thread that it
15 may be 5150-related.

16 Q. And you saw him sitting in a chair with a gun in his
17 hand, but never pointed it at anyone; correct?

18 A. I'm sorry. What's your question?

19 Q. I'm just trying to take it piece by piece.

20 You saw him with a gun in his hand, but not pointed
21 at anyone?

22 MS. CARPENTER: Objection. Asked and answered.

23 You can answer again.

24 MR. GALIPO: It is. I know it is, but I'm trying to
25 ask a non-compound question.

1 BY MR. GALIPO:

2 Q. But you told me about that already; correct?

3 A. Yes. I testified to the fact that Perez was sitting
4 in the garage with a firearm in his hand when we made contact
5 with him.

6 Q. Here's what I'm kind of getting at.

7 If you had seen him with a gun in his hand for a
8 period of time not pointed at anyone; and then at some point
9 he put the gun down; at some point he stood up; at some point
10 he walked towards the officers after being requested to do
11 so; and then for a period of time he's just standing there
12 visually unarmed; and he doesn't move or run towards the back
13 of the pool table where the gun is until after he's shot with
14 less-lethal, you thought that he suddenly was going to grab
15 this gun that he had in his hand before and never pointed at
16 anyone and start shooting at people?

17 MS. CARPENTER: Lacks foundation; incomplete
18 hypothetical; speculation.

19 You can answer.

20 THE WITNESS: I apologize, sir. That was a very
21 long statement. I'm not sure exactly what your question
22 is.

23 BY MR. GALIPO:

24 Q. My question is: Before you used deadly force, did
25 you consider the fact that he had never pointed the gun at

1 anyone before?

2 A. Prior to my use of deadly force, like I said before,
3 Perez was sitting with the gun armed in his hand. I had a
4 responsibility. The tactical team a had possibility to
5 safeguard lives and property, and that was why we were there.

6 We were there because of the actions of Perez.

7 If Perez hadn't been there with a firearm, we
8 wouldn't have been there.

9 Q. No. I understand. I guess in the totality of the
10 circumstances, you've heard that term before; right?

11 A. I have.

12 Q. Part of the totality of the circumstances here was
13 that he had never pointed the gun at anyone; had put it down;
14 had stood up; had walked towards you; was more or less
15 stationary for five or ten minutes; then was shot with
16 less-lethal; then started moving in the direction of the gun.

17 Would that be part, not all of the circumstances,
18 but part of it?

19 MS. CARPENTER: Objection to the extent it misstates
20 the testimony and the record evidence; lacks foundation.

21 You can answer.

22 THE WITNESS: I would say based on the totality of
23 the circumstances, there was a lot happening in the scene,
24 but at one point Perez made a run to where the gun was, and I
25 believed he was an immediate threat, and I decided to use

1 lethal force against that threat.

2 BY MR. GALIPO:

3 Q. And you obviously had training with respect to the
4 use of deadly force; correct?

5 A. Correct.

6 Q. And was part of your training that officers are
7 responsible to justify every shot?

8 A. Yes.

9 Q. And obviously, part of your training was in order to
10 use deadly force, there has to be an immediate or imminent
11 threat of death or serious bodily injury?

12 A. Yes. That's correct.

13 Q. And was your training on the converse, that if there
14 is not an imminent threat of death or serious bodily injury,
15 you should not use deadly force?

16 A. The department policy says that a safety member may
17 use deadly force to protect himself or others from what he
18 reasonably believes to be a threat of death or serious bodily
19 injury.

20 And when I used deadly force, I was under that
21 impression, that there was an immediate threat of death or
22 serious bodily injury that had Perez got ahold of that gun.

23 Q. Right. And is it your understanding from the policy
24 and training that if there is not a reasonable belief of an
25 immediate threat of death or serious bodily injury, you

1 **should not use deadly force?**

2 A. **I would say that's accurate, yes.**

3 If there is not an immediate threat, then you should
4 not use deadly force.

5 Q. **Okay.**

6 MR. GALIPO: Let's take our last break.

7 We'll do ten minutes, and I'll come back and I'll
8 finish up if that's okay with everybody.

9 MS. CARPENTER: Yes. Thank you.

10 THE WITNESS: Thank you, sir.

11 (Recess taken.)

12 BY MR. GALIPO:

13 Q. **Did you have an understanding whether there was**
14 **anybody in the house immediately before the shooting?**

15 A. I'm sorry. Are referring to the location that
16 belonged to the garage that Perez was in?

17 Q. **Yes.**

18 A. So that location is a duplex. So I think I
19 testified earlier that there was some neighbors in another
20 unit next door. They kind of share the same roof. So two of
21 those neighbors were still in the building, but they were
22 instructed to shelter in place I believe on the northwest of
23 his bedroom.

24 But in the specific location where Perez was at, the
25 information was relayed to me that there was nobody else in

1 the house.

2 Q. Did you have any information as to whether the door
3 between the garbage and the house was locked or not?

4 A. Yes. Sergeant Gaytan informed me that the door
5 leading from the garage into the house was locked.

6 Q. Do you have some training with respect to the
7 40-millimeter?

8 A. Yes. Everybody in the Specialized Enforcement
9 Division has training regarding the 40-millimeter.

10 Q. Can you describe to me what essentially it shoots
11 out.

12 A. Yes, I can. So the 40-millimeter launcher, there is
13 several different variations. There's multi-launcher which
14 holds four of the rounds, and there is a single launcher
15 which holds just one.

16 So when the launcher fires a projectile, the
17 specific projectile that was used during this incident was
18 referring to as a blunt impact projectile.

19 The projectile has a foam exterior, and then the
20 interior is sort of a gelatin material, and it has within
21 that a plastic piston that's designed to deliver blunt force
22 and then stop the projectile from bouncing off of the
23 target.

24 Q. And is it intended to cause pain?

25 A. I would say that the part of the use of a

1 less-lethal launcher like the 40-millimeter or bean bags for
2 that matter, it does involve pain.

3 Q. And have you been present before when those have
4 been deployed?

5 A. Yes. Many times.

6 Q. Do you have an estimate or range of how many
7 times?

8 A. I would say a specific incidents themselves, it
9 would be a hard to put a number on it. I would say probably
10 more than ten times.

11 Q. Had you ever seen anybody run before after being
12 struck with a 40-millimeter?

13 MS. CARPENTER: Vague and ambiguous; lacks
14 foundation.

15 You can answer.

16 THE WITNESS: Sir, I have been present for multiple
17 deployments with that less-lethal weapon system, and it
18 depends on the person. Some people react differently than
19 others. Sometimes people when they're struck with the
20 less-lethal will immediately put their hands up, and say,
21 stop, stop, please stop.

22 There are different reactions to it. I couldn't
23 give you a specific expected reaction because everybody's
24 different.

25 BY MR. GALIPO:

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1 I was designated as lethal cover. However, I did
2 have a Taser. The tactical plan is ultimately up to the
3 tactical commander to decide which avenue to take.

4 At that point there were directives given that if
5 there was separation from the firearm and less-lethal like
6 the 40-millimeter would be used to prevent him from getting
7 access to the firearm.

8 However, I did have a Taser with me, yes.

9 Q. And the tactical advisor, was that Sergeant
10 Gaytan?

11 A. Yes. Sergeant Gaytan was the tactical commander
12 on-scene.

13 Q. Did you ever hear Mr. Perez verbally threaten to
14 harm anyone?

15 A. I did not specifically myself hear him say any
16 threats. However, there was information relayed to me that
17 when the initial call for service was entered, that Perez
18 contacted a female that we got the location.

19 Perez did not live there. He displayed the firearm
20 to her, and the information that was relayed to me was that
21 she asked him, "What are you going to do, shoot me," and
22 while showing her the firearm, he said, "And."

23 And then that was the end of the encounter. So that
24 could be interpreted as a threat for all I know.

25 Q. Yeah. I guess I was wondering whether you heard him

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1 verbally threaten any of the law enforcement officers.

2 MS. CARPENTER: Vague and ambiguous; lacks
3 foundation.

4 You can answer.

5 THE WITNESS: Sir, during my time on-scene I did not
6 hear him make any threats towards law enforcement officers.

7 BY MR. GALIPO:

8 Q. Did you hear him use any profanity?

9 A. I don't recall him using any profanity during my
10 contact with him.

11 Q. Okay. So we're going to just look at a few
12 additional exhibits. Maybe I'll go chronological.

13 MR. GALIPO: Do you remember, Jinna, were we up to
14 11 or 12?

15 COURT REPORTER: We got up to 11.

16 MR. GALIPO: So this next one will be Exhibit 12.
17 We'll try to share the screen.

18 THE WITNESS: Okay.

19 (Exhibit 12 was marked for identification.)

20 BY MR. GALIPO:

21 Q. Do you recognize the person in this image?

22 And I'm not talking about the person on the wall in
23 the framing.

24 I'm talking about the one standing up.

25 A. Give us one second. The windows are taking out the

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1 DECLARATION UNDER PENALTY OF PERJURY

2

3 Case Name: A.J.P., et al. vs. County of San Bernardino, et
4 al.

5 Date of Deposition: September 15, 2023

6 Job No.: 6788

7

8 I, _____, hereby certify
9 under penalty of perjury under the laws of the State of
10 California that the foregoing is true and correct.

11 Executed this _____ day of _____,
12 20____, at _____, California.

13

14

15

16

17

18

ANDREW POLLICK

19

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21

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